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VIA EMAIL

July 17, 2017

Regional Freedom of Information Officer
U.S. Environmental Protection Agency, Region 10
Office of Ecosystems, Tribal and Public Affairs,
1200 6th Avenue ETPA-124
Seattle, WA 98101
E-mail: r10.foia@epa.gov

Re: Freedom of Information Act Request for Pebble Mine Documents

Dear Region 10 FOIA Officer:

On behalf of Nunamta Aulukestai (Nunamta), Trustees for Alaska requests copies of the following documents, pursuant to the Freedom of Information Act, 5 U.S.C. § 552.

Within 20 working days of your receipt of this letter, please provide me with copies of the following documents in the possession of the U.S. Environmental Protection Agency (EPA):

1. All documents regarding wetlands functional assessment[s] for the Pebble Limited Partnership's (PLP) proposed Pebble mine.

The term "documents" should be given the broadest possible interpretation and includes but is not limited to correspondence, memos, notes of meetings and telephone calls, electronic communications, reports, powerpoints, and facsimiles.

In responding to this request, please include relevant documents that are in the possession of any office of the EPA.

If you determine that portions of any of the requested documents are exempt from release, please segregate those portions, identify and describe the withheld portions, specify the applicable exemption, and release the remainder of the document. We encourage you to release any documents that may technically be shielded by exemptions if there is no purpose served by withholding the requested documents.

We also request a waiver of any fees associated with this request. Under FOIA, "[d]ocuments shall be furnished without any charge . . . if disclosure of the information is

in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 40 C.F.R. § 2.107(l). Pursuant to EPA’s FOIA regulations, fee waivers are decided on a case-by-case basis, and permitted where the disclosure “is in the public interest because its release is likely to contribute significantly to public understanding of the operations or activities of the government,” and the information “is not primarily in the commercial interest of the requester.” 40 C.F.R. § 2.107(l)(1). In making this determination, the EPA considers six factors. 40 C.F.R. § 2.107(l)(2) & (3).

1. The subject of this request concerns “operations or activities of the government.” 40 C.F.R. § 2.107(l)(2)(i).

The requested information will provide meaningful insight into the operations of the EPA. The documents will shed light on the EPA’s process for evaluating the proposed Pebble mine and are not duplicative of any information currently available to the public.

There is a clear connection between the requested records and Nunamta’s interest in and desire to inform the public about EPA’s activities related to Pebble’s potential hardrock mining activity in the Bristol Bay watershed. This FOIA request seeks information relevant to PLP’s potential permits required for its proposed mining activities. The information is not currently available to the public, and Nunamta intends to use these documents to provide the public with an understanding of the types of wetlands in the proposed mine area. Thus, the request concerns “operations and activities of the government” and this factor is satisfied.

2. Disclosure of the information is “likely to contribute” to an understanding of government operations and activities. 40 C.F.R. § 2.107(l)(2)(ii).

The focus of this request is documents that will significantly inform the public about the proposed project and how it will impact the watershed. This will help the public understand the impacts of the project as a whole and the EPA’s decision-making process. Accordingly, disclosure of the requested information will contribute significantly to public understanding of the government’s process and procedure. Thus, the information is “likely to contribute” to an understanding of both past and potentially future agency decisions and activities and this factor is satisfied.

3. Disclosure of the information will contribute to the “public understanding” of the subject. 40 C.F.R. § 2.107(l)(2)(iii).

Disclosure of these records will further the understanding of the public at large and is likely to be of interest to a broad audience. Nunamta is a public-interest organization whose core mission involves protecting the Bristol Bay watershed and environment, public resources, and human health by, among other mechanisms, monitoring government management of public lands and waters, encouraging public

participation in government processes, and ensuring enforcement of applicable public laws. The requested documents will undergo scientific and legal scrutiny by Nunamta to further the goals of protecting the Bristol Bay watershed, ensuring compliance with applicable laws and facilitating meaningful participation by citizens in future permitting decisions.

Nunamta possesses the experience and expertise necessary to evaluate the requested information and provide it to the public in a useful form. It is highly qualified to extract, synthesize, analyze, and convey the requested information to its members, other organizations, and the public at large in a way that will significantly contribute to understanding of the subject by the general public and improve its understanding of the proposed Pebble mine and impacts associated with mining in this sensitive environment. It will use this expertise to analyze and evaluate the information provided and provide these analyses and evaluations to members and the general public. *Cf. W. Watersheds Proj. v. Brown*, 318 F. Supp. 2d 1036, 1040 (D. Idaho 2004).

Nunamta has a history of disseminating information similar to that requested here to help inform the public and encourage participation in future planning and permitting processes. It will disseminate the information through various means, including direct-mail letters, newsletters, reports, magazine articles, electronic action alerts, the organizations' web sites, and through other formal and informal communications. This type of public dissemination is sufficient to warrant a fee waiver. *See* 40 C.F.R. § 2.107(l)(2)(iii); *W. Watersheds Proj.*, 318 F. Supp. 2d at 1041.

4. The disclosure is likely to "significantly" contribute to the public's understanding of the government's operations and activities. 40 C.F.R. § 2.107(l)(2)(iv).

The proposed Pebble mine is of broad public interest. One area of primary concern is the impact of the project on the watershed. The requested documents contribute unknown facts about how the wetlands that may be impacted by mining and what the EPA considers, with regard to wetlands functional assessments, when evaluating this project. Thus, the information will "significantly" contribute to the public's understanding of the subject and this factor is satisfied.

5. Nunamta does not have a "commercial interest" that would be furthered by the disclosure. 40 C.F.R. § 2.107(l)(3)(i).

Nunamta intends to use information and documents obtained through this FOIA request to develop and publicize an understanding of the environment, particularly wetlands, that will be impacted by mining and the EPA's consideration of how the wetland qualities have been assessed.

Nunamta is a nonprofit organization that has no commercial interest in the requested records. *See* 40 C.F.R. § 2.107(l)(3)(i). The materials discussed above, including the publications, websites, comments, and newsletters, are freely available to

the public at no cost. Thus, Nunamta has no commercial interest that would be furthered by disclosure, and this factor is satisfied.

6. Disclosure is not "primarily" in the commercial interests of the requester. 40 C.F.R. 2.107(l)(3)(ii).

There is no commercial interest in the dissemination of the information either as a primary or secondary interest, and thus, this factor is satisfied.

Based on the foregoing discussion, this fee waiver request meets the FOIA regulation requirements and a fee waiver should be granted. However, if the EPA determines that the fee waiver should not be granted, we request that you contact us prior to incurring any fees completing the FOIA request.

We request that the EPA respond within twenty (20) working days, as required by law. If the agency chooses to withhold any documents from disclosure pursuant to FOIA exemptions, we request that it: (i) identify each such document with particularity (including title, subject, date, author, recipient, and parties copied); (ii) explain in full the basis on which non-disclosure is justified; and (iii) provide us with any portions of the documents which may be segregated and for which a specific exemption is not claimed.

Please produce the records described above on a rolling basis; at no point should the search for—or deliberation concerning—certain records delay the production of others that the agency has already retrieved and elected to produce.

If you have any questions regarding the scope of this request, please do not hesitate to contact me at (907) 433-2007 or by email at blitmans@trustees.org or Jenni Frost at (907) 276-4244 x 116 or by email at jfrost@trustees.org. Thank you for your prompt attention to this request.

Sincerely,



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